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ELECTION

PATENT  
Customer No. 22,852  
Attorney Docket No. 07648.0023

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

**John CAIRNEY et al.**

Serial No.: 09/973,994

Filed: October 11, 2001

For: DIFFERENTIALLY-EXPRESSED  
CONIFER cDNAs, AND THEIR  
USE IN IMPROVING SOMATIC  
EMBRYOGENESIS

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) Group Art Unit: 1631  
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) Examiner: Cheyne D. Ly  
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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO RESTRICTION AND ELECTION REQUIREMENTS**

In a restriction requirement dated May 2, 2003, the Examiner required restriction  
under 35 U.S.C. § 121 between:

- I. Claims 1, 10 and 11, drawn to a relational database comprising the data of Table 1, classified in class 707, subclass 1.
- II. Claims 2-9, drawn to a method for staging embryos comprising providing at least one embryo, detecting expression and correlating expression, classified in class 435, subclass 6.
- III. Claims 12 and 13, drawn to an array, classified in class 422, subclass 68.1.
- IV. Claims 14-16 and 25-29, drawn to a method for staging plant embryos comprising selecting total RNA, correlating expression pattern, determining levels of expression, and correlating expression pattern to the relational database, classified in classes 435 and 702, subclasses 6 and 19, respectively.
- V. Claims 17, 19, 22-24, and 47-52, drawn to an isolated nucleic acid, classified in class 536, subclass 23.1.

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- VI. Claim 18, drawn to a polypeptide, classified in class 530, subclass 350.
- VII. Claims 20 and 21, drawn to an antibody, classified in class 530, subclass 387.1.
- VIII. Claims 30-36, drawn to a method for selecting advantageous plant clones, classified in class 435, subclass 6.
- IX. Claims 37-41, drawn to a method of determining embryo fitness, classified in classes 435 and 702, subclasses 6 and 19, respectively.
- X. Claims 42-46, drawn to a method for selecting advantageous growth conditions for embryo development, classified in classes 435 and 702, subclasses 6 and 19, respectively.
- XI. Claim 53, drawn to a plant cell, classified in class 800, subclass 295.
- XII. Claims 54-57, drawn to a method for producing a protein product during embryo development, classified in class 435, subclass 69.1.
- XIII. Claims 58-61, drawn to a method for staging embryos by monitoring expression of the protein product, classified in class 435, subclass 7.1.

Applicants elect with traverse to prosecute Group II, claims 2-9 drawn to a method for staging embryos comprising providing at least one embryo, detecting expression and correlating expression, classified in class 435, subclass 6. (Office Action, p. 2.)

Furthermore, it is requested that the Applicants elect two sequences if "Groups I-IV, VIII-X, or XIII is elected." (*Id.* at p. 5). Applicants therefore provisionally elect SEQ ID Nos. 79 and 131.


Lastly, it is unclear as to Examiner's statement in Group II regarding an election of species. The examiner states, "[i]f this Group is elected, then the below summarized 2 species sets (A and B), election of a species from each set is required." (*Id.* at p. 2.) No species sets A and B is set forth in the detailed action. (*Id.* at pp. 1-10.) Thus, with traverse, the Applicants elect a high stringency hybridization condition as a species for the section entitled "Hybridization conditions (A)." (*Id.* at p. 6.) Additionally, for the section

entitled "Methods for determination of expression (A)," applicants are required to select an unspecified type or method for expression determination or a type of method for expression determination from those listed in claim 8. (*Id.* at p. 6.) For the same reasons as above, Applicants elect with traverse a DNA array method for expression determination.

Applicants do not believe that an additional extension of time or fee beyond that provided herein is required to obtain entry of this response. If necessary, however, please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

By:   
M. Andrew Holtman  
Reg. No. 53,032

Dated: June 2, 2003

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